

November 29, 2017

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

Re: Freedom of Information Act Request for Records Relating to the Testing of Glider Vehicles and Correspondence Regarding Glider Vehicles

Dear National Freedom of Information Officer:

Environmental Defense Fund (“EDF”) respectfully requests records, as that term is described at 5 U.S.C. § 552(f)(2) of the Freedom of Information Act (“FOIA”), of the U.S. Environmental Protection Agency (“EPA” or the “Agency”). This is a three-part request regarding: 1) any records regarding a study conducted by Tennessee Technological University (“Tennessee Tech”) from September 2016 to November 2016, analyzing nitrogen oxides (NO_x), particulate matter (PM), and carbon monoxide (CO) emissions from glider vehicles, and the results of that study; 2) any records of other testing of glider vehicles for emissions of any air pollutant, including but not limited to particulate matter or NO_x, whether conducted by EPA or any other entity; and 3) any correspondence related to glider kits or vehicles.¹

First, EDF requests copies of all records that discuss, reference, and/or are related to the glider vehicle study or studies conducted by Tennessee Tech, which is cited as “Exhibit 1” in the July 10, 2017 letter from Fitzgerald Glider Kits, LLC, Indiana Phoenix, Inc., and Harrison Truck Centers, Inc., to Administrator Scott Pruitt² and results of that study, which are cited in “Exhibit 1,” and titled “APPENDIX A: Testing Results from Tennessee Tech Phase 1 Heavy Duty Vehicle Study” in the same letter. Specifically, EDF requests copies of:

- (i) any of the following types of records, which include, but are not limited to:

¹ A “glider kit” is a tractor chassis with frame, front axle, interior and exterior cab, and brakes, as shown in Figure 1.1 at 81 FR 73512 (Oct. 25, 2016). A “glider vehicle” is a glider kit to which an engine, transmission, and rear axle are added. *Id.* at 73513.

² Petition for Reconsideration of Application of the Final Rule Entitled ‘Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 Final Rule’ to Gliders, available at <https://www.epa.gov/sites/production/files/2017-07/documents/hd-ghg-fr-fitzgerald-recons-petition-2017-07-10.pdf>.

- the study itself;
- data sources for the study;
- correspondence (internal and external) regarding the study;
- notes;
- research;
- opinions; and
- analysis; and

(ii) any record that includes, but is not limited to, discussion of and/or reference to:

- who conducted the testing;
- conditions of the study, including location, test facility used to collect the data, test cycles, test temperatures, quality control methods utilized, and any information relevant to determining whether the testing was done in accordance with official EPA testing protocols;
- what was tested in the study, including information regarding the engines and/or vehicles tested, their condition, specifications, make, model, origin, and mileage;
- type of test equipment used, including type of dynamometer(s) and emission measurement test equipment;
- the results of the study.

This request includes all correspondence and records for which any of the following EPA employees was among the sender(s) and recipient(s), (regardless of whether the correspondence also included any other sender(s) or recipient(s)), and/or was the author or manager of any record (including the study, data sources of the study, any notes, research, opinions, or analysis), in which the Tennessee Tech study or test of glider kits and results of the study are discussed and/or referenced:

- Brittany Bolen
- Bill Charmley
- Angela Cullen
- Samantha Dravis
- Sarah Dunham

- Christopher Grundler
- Mandy Gunasekara
- David Haugen
- Benjamin Hengst
- E. Scott Pruitt
- Matthew Spears

Second, EDF requests all records of any other studies or tests of glider vehicles, or of the donor engine used in glider vehicles, whether planned, underway, pending or considered, including any and all tests conducted by EPA, or conducted by other entities and for which records are in EPA's possession. Specifically, EDF requests copies of:

(i) any of the following types of records, which include, but are not limited to:

- the study itself,
- data sources for the study,
- correspondence (internal and external) regarding the study,
- notes,
- research,
- opinions, or
- analysis, and

(ii) any record that includes, but is not limited to, discussion of and/or reference to:

- conditions of the study, including location, test facility used to collect the data, test cycles, test temperatures, quality control methods utilized, and any information relevant to determining whether the testing was done in accordance with official EPA testing protocols;
- what was tested in the study, including information regarding the engines and/or vehicles tested, their condition, specifications, make, model, origin, and mileage;
- type of test equipment used, including type of dynamometer(s) and emission measurement test equipment;
- the results of the study.

This request includes all correspondence and records for which any of the EPA employees listed above was among the sender(s) and recipient(s), (regardless of whether the correspondence also included any other sender(s) or recipient(s)), and/or was the author or manager of any record (including the study, data sources of the study, any notes, research, opinions, or analysis), in which a study or test of glider kits and results of the study are discussed and/or referenced.

Third, to the extent not covered by the first and second requests, EDF requests copies of all correspondence that included among its sender(s) or recipient(s) any of the EPA employees listed above and included any of the following terms:

- “glider”
- “gliders”
- “glider kit”
- “glider-kit”
- “glider vehicle”
- “glider-vehicle”
- “glider truck”
- “glider-truck”

This request includes any correspondence for which any EPA employee listed above was among the sender(s) and recipient(s), regardless of whether the correspondence also included any other sender(s) or recipient(s), and for which the term “glider,” “gliders,” “glider-kit,” “glider kit,” “glider-vehicle,” “glider vehicle,” “glider-truck,” and/or “glider truck” is used.

For the purposes of these three requests, EDF respectfully seeks records produced, modified, or transmitted since January 1, 2017 that exist as of the date that EPA begins searching for records responsive to this request.

For the purposes of these three requests, correspondence includes, but is not limited to, hard-copy and electronic correspondence such as emails, voice mails, records of phone calls, records of meetings, text messages, and correspondence transmitted through any other electronic platform.

If any of the information sought in these requests is deemed by EPA to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide EDF with an explanation, for each such record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed.

Request for Expedited Processing

EDF respectfully seeks expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 40 C.F.R. § 2.104(e)(1)(ii), which applies when there is “[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.” With respect to five other FOIA requests, EPA recently recognized EDF’s eligibility for expedited processing on this basis.³ In support of this request for expedited processing, I certify that the following information is true and correct to the best of my knowledge and belief:

- (1) EDF engages in extensive, daily efforts to inform the public about matters involving environmental and public health policy. For example, EDF has multiple channels for distributing information to the public, including through direct communication with its more than two million members, press releases, blog posts, active engagement on social media, and frequent appearances by staff in major media outlets.⁴
- (2) In the 2016 Phase 2 Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines for model years 2021-2027 (“the Phase 2 standards”), EPA required that glider vehicles be certified to criteria pollutant standards corresponding to the year of the vehicle, rather than the year of the donor engine. The Phase 2 standards also allow a limited number of glider vehicles each year to be certified to the year of the engine, rather than the year of the vehicle. Glider vehicles typically emit very high levels of the criteria pollutants PM and NOx.⁵ EPA stated that capping the number of glider vehicles “will yield substantial health-related benefits,”⁶ that a glider vehicle emits criteria pollutants at rates *20 to 40 times* what a new heavy duty engine emits⁷ so that a single year of glider vehicle production of 10,000 vehicles is equivalent from an air pollution standpoint of adding at least 200,000 new trucks to the nation’s highways,⁸ and that a single year of glider vehicle production is estimated to

³ See Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ2017-003545 (Feb. 23, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-005587 (Apr. 12, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-008622 (July 7, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009283 (July 13, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009579 (July 26, 2017).

⁴ See, e.g., Martha Roberts, Scott Pruitt Keeps Americans in the Dark on His Activities, EDF Climate 411 Blog (June 20, 2017), <http://blogs.edf.org/climate411/2017/06/20/scott-pruitt-keeps-americans-in-the-dark-on-his-activities/>; EDF Associate Vice President Jeremy Symons, Did Trump’s EPA Chief Just Rewrite the EPA’s Mission?, Huffington Post (Apr. 20, 2017), <http://www.huffingtonpost.com/entry/58efe8b7e4b0156697224dab>.

⁵ 81 FR 73942-43; see also U.S. Environmental Protection Agency, Frequently Asked Questions about Heavy-Duty “Glider Vehicles” and “Glider Kits,” EPA-420-F-15-904, (2015).

⁶ 81 Fed. Reg. 73883.

⁷ 81 Fed. Reg. 73943.

⁸ EPA and NHTSA, Response to Comments for Joint Rulemaking (EPA-420-R-16-901) (August 2016) at 1875 n. 237, Document ID: EPA-HQ-OAR-2014-0827-2344.

result in 350 to 1,600 premature deaths over the glider vehicles' lifetimes.⁹ The Phase 2 standards, which include a cap on glider vehicle production using engines not certified to current emission standards, are already in effect, but a more stringent cap on high-polluting glider vehicles takes effect on January 1, 2018.¹⁰ (There are no caps on the number of glider vehicles that may be produced if certified to the standards for the year of the vehicle.)

- (3) On August 17, 2017, EPA announced in a press release and letter to Fitzgerald Glider Kits that it would revisit the provisions of the Phase 2 standards regarding glider vehicles, following comments received by EPA from glider vehicle industry groups.¹¹ On November 9, 2017, EPA issued a proposed rule, "Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits," and has opened a public comment period, ending on January 5, 2018.¹²
- (4) If EPA finalizes the proposed rule, lifting the cap on the number of glider vehicles not meeting current emission standards for criteria pollutants that may be sold annually, or if the provisions of the Phase 2 rule related to glider vehicles are otherwise weakened, there will be immediate and severe public health harms due to criteria pollutant emissions, including NOx and PM.
- (5) It is urgent that the public understand the information that EPA has regarding glider vehicle emission, which has informed EPA's reconsideration of the current glider vehicle standards, as well as the extent and nature of the correspondence that EPA has had with glider kit and glider vehicle industry groups, before the Agency takes further action to remove critical public health protections. The public must be able to assess the glider kit and glider vehicle industry's access to Agency decision-makers, compared to the access afforded to the general public. Denying expedited processing could conceal inequitable access until key actions have been taken or decisions have been finalized.

Request for Fee Waiver

⁹ EPA and NHTSA, Response to Comments for Joint Rulemaking (EPA-420-R-16-901) (August 2016) at 1881, Document ID: EPA-HQ-OAR-2014-0827-2344. This estimate is conservative, as it does not account for the carcinogenicity of diesel particulate matter. *Id.*

¹⁰ 40 CFR section 1037.150 (t) (1) (ii), promulgated at 81 FR 74060; see also 81 Fed. Reg. 73518.

¹¹ EPA News Release, EPA Announces Intent to Revisit Provisions of Phase 2 Heavy-Duty Rules (August 17, 2017), available at <https://www.epa.gov/newsreleases/epa-announces-intent-revisit-provisions-phase-2-heavy-duty-rules>; Letter from EPA Administrator Scott Pruitt to Tommy C. Fitzgerald, Fitzgerald Glider Kits (August 17, 2017), available at <https://www.epa.gov/sites/production/files/2017-08/documents/hd-ghg-phase2-fitzgerald-gliders-ltr-2017-08-17.pdf>.

¹² EPA, Proposed Rule, Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits (November 9, 2017), available at <https://www.epa.gov/sites/production/files/2017-11/documents/repeal-emission-requirements-gliders-nprm-2017-09-11.pdf>.

As a non-partisan, non-profit organization that provides information that is in the public interest, EDF respectfully requests a waiver of fees associated with this request. We are not seeking information for any commercial purpose and the records received will contribute to a greater public understanding of an issue of considerable public interest: whether EPA is actively granting preferential access to glider kit industry groups on the most important environmental policy decisions facing our nation today. 5 U.S.C. § 552(a)(4)(A)(iii). EDF is well positioned to disseminate the records to the public, as we routinely issue press releases, action alerts, reports, analyses, and other public outreach materials. We fully intend to disseminate newsworthy information received in response to this request. Accordingly, we respectfully request that the documents be furnished without charge. 5 U.S.C. § 552(a)(4)(A)(iii).

For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. In the event EDF's request for a fee waiver is denied or if you have any questions about this request, please contact me immediately by telephone at (303) 447-7205 or by email at ahenderson@edf.org.

Respectfully submitted,

Alice Henderson

Environmental Defense Fund